

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
1998 Biennial Review – Streamline Contributor Reporting)	CC Docket No. 98-171
Requirements Associated with Administration of)	
Telecommunications Relay Service, North American)	
Numbering Plan, Local Number Portability, and Universal)	
Service Support Mechanisms)	
)	
Telecommunications Services for Individuals with Hearing)	CC Docket No. 90-571
and Speech Disabilities, and the Americans with)	
Disabilities Act of 1990)	
)	
Administration of the North American Numbering Plan)	CC Docket No. 92-237
and North American Numbering Plan Cost Recovery)	NSD File No. L-00-72
Contribution Factor and Size)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Telephone Numbering Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)¹ hereby files its initial comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.²

¹ NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Communications Act of 1934, as amended (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, *1998 Biennial Regulatory Review – Streamline Contributor Reporting Requirements Associated with the Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration with the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor* National Telecommunications Cooperative Assn. 1 CC Dockets 96-45, 98-171, 90-571
Initial Comments 92-237, 99-200, 95-116, 98-170,
April 22, 2002 FCC 02-43

NTCA specifically recommends that the Commission reject the connection-based contribution proposal contained in the FNPRM because it violates the jurisdictional, equitable and non-discriminatory requirements contained in sections 2(b) and 254(d) of the Act. NTCA urges the Commission to instead modify the existing revenue-based universal service fund (USF) mechanism by eliminating the wireless carrier safe harbor provisions and expanding the pool of contributors to include cable, wireless and satellite broadband Internet access providers. Eliminating the wireless safe harbor and expanding the pool of contributors will ensure a sufficient and continuous revenue-base for the interstate universal service mechanisms and create a more level playing field in the rapidly evolving and increasingly competitive telecommunications services market.

I. THE CONNECTION-BASED, END-USER SURCHARGE PROPOSAL FOR USF CONTRIBUTIONS SHOULD BE REJECTED

The Commission should reject the proposal to require carriers to recover federal interstate universal service fund (USF) contributions through an end-user surcharge based on customer connections to the public switched telephone network (PSTN).³ The proposal unduly favors interexchange carriers (IXCs) by unjustly shifting a disproportionate share of the interstate universal service contribution and collection burden on local exchange carriers (LECs). It is also inherently unfair to no-volume, low-volume, and low-income interstate end-users because it imposes the same charge on each end-user regardless of their usage of interstate service. It violates section 2(b) of the Act because it requires the Commission to regulate rates in the

and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, *Numbering Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, FCC 02-43, Further Notice of Proposed Rulemaking and Report and Order (rel. Feb. 26, 2002)(FNPRM).

³ FNPRM ¶ 2.

intrastate jurisdiction, which the United States Court of Appeals for 5th Circuit has expressly determined is outside the scope of the Commission's jurisdiction.

Section 254(d) requires that "every telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and non-discriminatory basis" to preserve and advance universal service. In 1999, the intrastate and interstate long distance market had more than \$108 billion in revenues, with IXC's accounting for \$99 billion and LEC's accounting for the remaining \$9 billion.⁴ Treating all connections the same, regardless of their interstate usage, would clearly shift the lion's share of the interstate USF contribution obligation away from IXC's, whose services and revenues are primarily interstate, and place this burden squarely on LEC's, who have a connection to most customers of local and interstate service but whose services and revenues are predominately intrastate. Under the proposal, IXC's that are presently responsible for approximately 63 percent of interstate USF contributions would only be responsible for approximately 25 percent of the contributions.⁵ Conversely, incumbent local exchange carriers (ILEC's) and competitive local exchange carriers (CLEC's), currently responsible for approximately 23 percent of the interstate USF contributions, would have their contribution obligation more than double to approximately 52 percent under the new proposal.⁶ Comparing the carriers that provide the bulk of interstate services to the carriers that would pay the bulk of interstate USF contributions, it is apparent that the connection-based proposal in the FNPRM is anything but equitable and non-discriminatory.

The proposal is also fundamentally unfair and discriminatory to no-volume, low-volume, and low-income interstate consumers because it applies the same charge to each consumer

⁴ See FCC Study on the Long Distance Telecommunications Industry, Industry Analysis Division (rel. Jan. 24, 2001).

⁵ FNPRM ¶ 59.

regardless of whether the consumer pays \$0.00 or \$1500.00 per month for interstate services. It fails to reflect the amount of interstate services that a customer uses or offset the unequal burdens it places on different classes of customers. As a result, it unfairly shifts the interstate contribution burden onto classes of customers who can least afford it and enables other classes of customers and their carriers to escape paying their equitable share of interstate universal service contributions. It simply cannot satisfy the statutory requirement of an “equitable and non-discriminatory” method of assessing interstate universal service contributions.

Furthermore, the United States Court of Appeals for 5th Circuit has determined that the Commission is prohibited under section 2(b) from assessing intrastate revenues to support the interstate universal service fund.⁷ Because the FNPRM’s connection-based proposal applies universally to customers connected to the local network it fails to reflect differences between the customer’s interstate and intrastate usage and differences between providers of interstate and intrastate services. It would inevitably impose a charge on local service and capture intrastate services and revenues as part of a carrier’s contribution to the interstate USF mechanism. This would violate section 2(b) of the Act.⁸ The Commission therefore cannot require all connections as described in the FNPRM to contribute the same amount to the interstate USF without violating the jurisdictional, equitable, and fairness requirements contained in sections 2(b) and 254(d) of the Act.

II. CONTINUE TO ASSESS USF CONTRIBUTIONS BASED ON INTERSTATE AND INTERNATIONAL REVENUES

The Commission should continue to base carrier universal service contributions on interstate and international end-user revenues. The fact that IXC interstate revenues have

⁶ Mobile wireless carriers’ total USF contribution would increase from approximately 14 percent to 23 percent under the FNPRM connection-base proposal. *Id.*

⁷ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999).

declined recently does not justify scrapping the current revenue-based contribution mechanism.⁹

As the Commission correctly acknowledges, interstate revenues have consistently grown from 1984 to 1997, when the current contribution system was adopted, and these revenues are expected to continue to grow in the future.¹⁰ In addition, the number of international minutes has increased from less than 3 billion in 1980 to more than 39 billion in 1999.¹¹ The recent decline in the IXC's portion of interstate and international revenues therefore does not mean that these revenues are no longer available in the interstate and international services market. To the contrary, the revenues are available and growing, but are now being recovered by wireless carriers, large LECs entering the long-distance market, and alternative interstate service providers, such as cable modem access providers.¹² The Commission therefore should modify the current universal service mechanism to ensure that it reflects changes in the market and continues to work equitably and efficiently by (1) eliminating the wireless safe harbor percentages in the current USF contribution mechanism; and (2) expanding the list of contributors to include all providers of interstate telecommunications, such as cable, satellite and wireless broadband Internet access providers.

III. ELIMINATE THE WIRELESS SAFE HARBOR

The Commission should eliminate the wireless carrier safe harbor percentages for determining wireless carrier contributions to the interstate USF mechanism. The safe harbor

⁸ 47 U.S.C. §2(b).

⁹ NPRM ¶¶ 7-14.

¹⁰ NPRM ¶ 7.

¹¹ See FCC Study on the Long Distance Telecommunications Industry, Industry Analysis Division, p.11, (rel. Jan. 24, 2001).

¹² *AT&T v. City of Portland*, 216 F.3rd 871 (9th Cir. 2000) (The Court has found cable-modem service to be an interstate telecommunications service when used to access the Internet). The Commission has decided that cable modem service is not a telecommunications service but it retains authority to assess these services nonetheless. See, *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling*, and *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, ¶ 110, (rel. Mar. 15, 2002).

percentages are severely outdated and fail to represent the wireless industry's true USF contribution obligation.¹³ To ensure the Nation's universal service needs are met in a fair and equitable manner, the Commission should eliminate the safe harbor and require all wireless carriers to contribute their fair share to the interstate USF mechanism based on their properly allocated interstate and international revenues multiplied by the quarterly USF contribution factor.

The wireless safe harbor percentages were established in 1998, when the average wireless customer's monthly minutes-of-use was only 89 minutes per month. As of third quarter 2001, the average wireless customer's usage has more than quadrupled to 363 minutes per month.¹⁴ Today wireless customers spend an average of 550 minutes on their wireless phone per month, and this figure continues to grow.¹⁵

Moreover, between 1998 and 2001, the number of wireless subscribers in the United States doubled from 60 million to 120 million.¹⁶ As of April 5, 2002, this figure has grown to more than 133 million.¹⁷ During this same period of amazing growth, wireless carrier revenues have increased from \$29 billion to \$58 billion.¹⁸ The Commission itself noted that 20 million mobile wireless customers subscribe to plans that offer free nation-wide long distance.¹⁹ As a result of the wireless safe harbor provisions, wireline carriers have been subsidizing wireless carrier contributions to the interstate universal service fund for several years.

¹³ The FCC's wireless safe harbor rules do not require supporting data from cellular, broadband PCS and certain types of SMR providers regarding their reported percentage of interstate telecommunications if the wireless carrier reports at least 15% of their cellular, broadband PCS, and SMR telecommunications revenues as interstate. For paging and SMR providers that do not primarily provide wireless telephony their safe harbors are 12% and 1%, respectively.

¹⁴ Public Forum For the 7th Annual CMRS Competition Report, Charles Mahla, Senior Economist, Econ One, February 28, 2002. The report is available at <http://wireless.fcc.gov/cmrs-crforum.html>.

¹⁵ See, 3G, or Not to Be?, by Yuki Noguchi, The Washington Post, Business p. E1, April 5, 2002, citing Charles Levine, President of Sprint PCS.

¹⁶ CTIA's Semi-Annual Wireless Industry Survey Results, June 1985 to June 2001, see www.ctia.org.

¹⁷ See CTIA's Homepage at www.ctia.org.

¹⁸ CTIA's Semi-Annual Wireless Industry Survey Results, June 1985 to June 2001, see www.ctia.org.

Today, more and more LEC wireline customers are using their wireline telephones exclusively for local and intrastate service. The reason for this shift in usage is because wireline customers are also becoming wireless mobile phone customers. Wireless carriers typically bill their customers using a bundled flat rate for all intrastate and interstate calls (e.g., \$34.99 per month for 250 minutes on Monday through Friday before 8:00 p.m. and 1250 minutes nights and weekends). Consequently, many consumers with both types of phones are making all, or most, of their interstate calls on their wireless phones to avoid the additional per-minute interstate charges on their wireline phone bill.

The Commission should not be misled by claims that wireless carriers' bundling of local and long distance services makes it too difficult to distinguish between the services and therefore difficult to allocate revenues accordingly. In fact, wireless carriers can easily distinguish their customers' local and long distance calls. Today, wireless customers have the option of receiving an itemized monthly bill listing each call by telephone number with the associated minutes for each call. This itemization enables both the wireless customer and wireless carrier to distinguish between local and long distance calls each month, thus making it very possible to allocate interstate revenues based on total interstate minutes on the PSTN by each wireless carrier. By distinguishing a wireless carrier's total interstate minutes for the relevant contribution period, these minutes could then be multiplied by the appropriate interstate revenue allocator to determine the carrier's total interstate revenues for the relevant period. The Commission could then determine the wireless carrier's true interstate USF obligation by multiplying the newly calculated interstate revenues by the quarterly USF contribution factor to ascertain the wireless carrier's equitable and non-discriminatory interstate USF contribution obligation.

¹⁹ NPRM at note 328.

The current wireless safe harbor percentages should be eliminated so that actual interstate minutes and appropriately allocated interstate telecommunications revenues flowing to wireless carriers can be used to determine the wireless industry's true contribution obligation to the interstate USF mechanism. Maintaining the current wireless safe harbor percentages will only continue to facilitate and create more economic distortions concerning carrier contributions to the interstate USF mechanisms and sustain competitive advantages for wireless carriers. Eliminating wireless safe harbor and requiring wireless carriers to contribute their fair share based on their actual interstate and international usage and properly allocated revenues will ensure the continued economic efficiency in the current revenue-based USF mechanism and create a more level playing field for competing telecommunications service providers.

IV. EXPAND THE LIST OF USF CONTRIBUTORS TO INCLUDE CABLE, WIRELESS AND SATELLITE BROADBAND INTERNET ACCESS PROVIDERS

Cable, wireless and satellite communications companies are currently using their platforms to provide broadband Internet access service in direct competition with incumbent ILEC broadband access service. None of these non-LEC broadband access providers, however, have the same universal service obligations as their ILEC competitors. Contribution policies and rules therefore should change in order to eliminate the distinct competitive advantage these companies have over contributing ILECs, as well as the drain they impose on the interstate revenue assessment base.²⁰

Section 254(d) specifically provides the Commission with permissive authority to require “any other provider of interstate telecommunications” to contribute to universal service. Using this authority the Commission has required some entities that provide interstate telecommunications to end-users for a fee to contribute to the interstate universal service

mechanisms. This category of providers includes entities that lease excess telecommunications capacity to end-users on a private contractual basis.

Under the Commission's existing contribution rules, wireline telecommunications carriers providing "telecommunications services," including broadband transmission services, ILECs are required to make USF contributions to the extent they provide broadband transmission services or other telecommunications services on a stand alone basis to affiliated or non-affiliated Internet service providers (ISPs) or end-users.²¹ These rules, however, do not apply to cable, wireless, and satellite providers of broadband transmission services or broadband Internet access.²² The Commission is tentatively proposing to redefine certain ILEC propounded broadband services as "telecommunications" and place these on a regulatory parity basis with "cable modem" services. It should also treat all providers alike for USF assessment purposes.²³

To the extent that the Commission is concerned about competitive neutrality and the sustainability of an adequate revenue base for its interstate USF mechanisms, it should require all providers of broadband transmission or other telecommunications services on a stand alone basis to affiliated or non-affiliated ISPs or end-users to contribute on an equitable and non-discriminatory basis.²⁴ The Commission's rules should keep pace with competition as competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and broadband Internet access services. The Commission should therefore require cable, satellite, and wireless broadband Internet access providers to contribute

²⁰ *First Repost and Order*, CC Docket 96-45, 12 FCC Rcd 9183-9184, ¶795.

²¹ *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers*, and *Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhances Services: 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dockets Nos. 95-20, 98-10, FCC 02-42, Notice of Proposed Rulemaking (NPRM) ¶¶ 71 and 72 (rel. Feb. 15, 2002).

²² *Id.* ¶ 79.

²³ *Id.*

²⁴ 47 U.S.C. §254(d).

to the federal universal service fund. Failing to position these carriers on equal footing with existing contributors will continue to place existing contributors at a distinct competitive disadvantage and further drain revenues from the existing contribution revenue assessment base.

V. CONCLUSION

Based on the foregoing reasons, the Commission should reject the connection-based, end-user surcharge USF contribution proposal because it violates the jurisdictional, equitable and non-discriminatory requirements in sections 2(b) and 254(d) of the Act. The Commission should instead continue to base carrier universal service contributions on interstate and international end-user revenues and ensure an adequate assessment base by eliminating the wireless carrier safe harbor provisions and expanding the pool of contributors to include cable, wireless and satellite broadband Internet access providers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170 was served on this 22nd day of April 2002 by first-class, U.S. Mail, postage prepaid, to the following persons:

/s/ Gail C. Malloy
Gail C. Malloy

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